



Kaw Nation

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November 14, 2017

Via Electronic Submission

Chairman Ajit Pai
Federal Communications Commission
445 12th Street SW
Washington, DC

Re: Accelerating Wireless Broadband Deployment by Removing Barriers to
Infrastructure Investment, WT Docket No. 17-79

Streamlining Deployment of Small Cell Infrastructure by Improving
Wireless Facilities Siting Policies, WT Docket No. 16-421

Replacement Utility Poles Report and Order, WT Docket No. 17-79 (FCC-CIRC1711-03)

Dear Chairman Pai:

On behalf of the Kaw Nation of Oklahoma we express the following ex parte comments per the above referenced Federal Communications Commission (FCC) actions. The Kaw Nation has been an active participant in the national conversation concerning accelerating wireless broadband deployment. The Kaw Nation has been working with numerous other tribes, as well as the National Association of Tribal Historic Preservation Officers, local governments and wireless industry representatives to address the issues outlined in this rulemaking.

Changing Technology and Collaborative Working Relationships:

The Kaw Nation understands the benefits of modernizing the FCC's Section 106 processes, especially given the emerging 5G technology being deployed by the wireless industry. As stated in previous ex parte comments, submitted Nov 7, the Kaw Nation is supportive of many of the updates and suggestions in the Notice of Proposed Rule Making 17-79. We believe that many of the issues addressed in 17-79 could be resolved through sustained and meaningful engagements between wireless providers, industry consultants and Indian tribes. We would appreciate the FCC's active role in this stakeholder meeting. The Kaw Nation has been actively engaging with other tribes in Oklahoma to establish a coalition of agreement that would provide a baseline for the region's tribes as a starting point in these discussions. The Kaw Nation suggests a smaller statewide or regional meeting with a limited agenda would be a good start.

Replacement Utility Poles Report and Order (FCC-CIRC1711-03)

As the FCC finalizes the draft Replacement Utility Poles Report and Order (FCC-CIRC1711-03), we are submitting the following requests, comments, and recommendations to strengthen your goal of expediting telecommunications facilities deployment while maintaining the integrity of the section 106 process for our national and tribal historic preservations. The Kaw Nation wishes to reiterate that ground disturbance

remains of particular interest, even in cases of current tower infrastructure, as many of these poles were not subject to Section 106 review when first installed.

1. Request for Data

The FCC asserts that “the construction of a replacement for a preexisting utility pole will have no potential to affect historic properties...” (ref: para 11). The Kaw Nation requests access to any studies or analysis that make and/or support FCC’s statement as well as the underlying methodology used to make this determination.

2. Not all pole replacements are harmless

Language in the Report and Order describes how excluding the replacement of utility poles from Section 106 reviews will not harm any historic properties. This it is not as simple as described. There are many pole sites that predate the Section 106 process, and were therefore may very well impact historic properties.

Also, as a replacement pole may be up to 10% taller than the original pole, thus allowing for the additional of more antennas, it is reasonable to assume that the hole will necessarily need to be deeper and potentially wider to accommodate for these new pole attributes.

3. Rights of way and previously disturbed ground

Rights of way (ROW) for whatever purpose (utility, transportation, communications) and on whatever land (tribal, state, federal) have rarely, if ever, been surveyed for tribal historic properties. Most ROWs were created prior to the NHPA in 1966, and certainly created prior to Presidential Executive orders that Indian tribes must be consulted on issues that affect them.

Likewise, previously disturbed ground rarely, if ever, includes tribal input on the activity that “disturbed” the land. Thus, assertions that such land has no potential to affect tribal historic properties cannot be made with any certainty.

As has been described in prior tribal comments on this topic, we recommend a system that would allow for tribal participation in areas where it cannot be demonstrated that tribal reviews ever occurred.

The proposal for “no new ground disturbance outside previously disturbed areas” is not a clear statement as proposed. Therefore, we recommend that it be give further consideration prior to it is considered an exclusion.

In light of commitment to work with the FCC and industry on infrastructure efficiencies, we recommend that any exclusion should include additional language to the report and order stating that:

A safeguards process will be created that will require post-work documentation that a pole replacement meets these standards: (1) the replacement pole is not 10% taller than the original; (2) the replacement pole is of the same quality and appearance as the original; and (3) any tribal historic properties that are discovered will require immediate work stoppage and affected Indian tribes will be contacted and invited to the project site to discuss the appropriate disposition of human remains or objects. Any applicant who fails to adhere to this process will be subject to FCC enforcement actions.

This safeguards process allows for pole replacements to continue, per the process described in the report and order. It also will require less paperwork than a pre-review process, and it will cause delays to proposed construction.

4. Use of existing structures

We agree that using existing structures is preferred over the deployment of newly constructed towers and poles. Replacing poles is not the same as using an existing pole. However, with the adoption of proper safeguards it can be an efficiency incorporated in this exemption.

5. 10% Increase in Replaced Poles

We can appreciate the FCC including the proposed language that the replacement poles not exceeding the original pole in height by more than 10%. In order to be clear and make this proposal acceptable, language needs to be added to the report and order to deter rapid replacements for poles with the incremental 10% increases. We recommend that the following language be added to this issue to manage expectations:

A pole may only be replaced once every year and should not exceed the original pole's height or width by more than 10% in order to avoid unanticipated effects on historic properties.

Thank you for your consideration of the Kaw Nation's comments.

Sincerely,

/s/

Kenny Wheeler
Kaw Nation TCNS Administrator

cc: Commissioner Carr
Commissioner Clyburn
Commissioner O'Rielly
Commissioner Rosenworcel